

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

John J. Adams, Lisa Mohler, Glenn
Becklund, Ronald Krueger,
Complainants,

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

vs.

Donald Springer,

Respondent.

The above-entitled matter came on for hearing on December 30, 2004, before a panel of three Administrative Law Judges: George A. Beck (Presiding Judge), Allan W. Klein and Beverly Jones Heydinger. The hearing record closed on December 30, 2004 at the conclusion of the hearing.

The Complainants, John J. Adams, RR 1, Box 192, Mazeppa, MN 55956; Lisa Mohler, RR 1, Box 176, Zumbro Falls, MN 55991; Glenn Becklund, P.O. Box 268, 500 Bridge Street, Millville, MN 55957; and Ronald Krueger, 10 Fourth Avenue SW, Elgin, MN 55932, appeared representing themselves at the hearing. Patrick J. Kelly, Esq. and Sarah J. Sonsalla, Esq. of the firm of Kelly and Fawcett, P.A., 2350 Piper Jaffray Plaza, 444 Cedar Street, St. Paul, MN 55101 appeared representing the Respondent, Donald Springer.

NOTICE

This is the final decision in this case, as provided for by Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as set out in Minn. Stat. § § 14.63 to 14.69.

STATEMENT OF THE ISSUES

1. Did the Respondent violate Minn. Stat. § 211B.04 by failing to provide a disclaimer on campaign material;

2. Did the Respondent violate Minn. Stat. § 211B.06 by making false statements in campaign material that he knew were false or were communicated to others with reckless disregard of whether they were false?

The panel concludes that the evidence demonstrates that the Respondent violated Minn. Stat. § 211B.04 but that the evidence does not demonstrate a violation of Minn. Stat. § 211B.06.

Based upon the entire record, the panel makes the following:

FINDINGS OF FACT

1. The Respondent, Donald Springer, and Merl Norman were candidates for District 3 County Commissioner in Wabasha County in the November 2, 2004 election. Mr. Norman was the incumbent County Commissioner. Mr. Springer was County Commissioner for the Third District from 1996 to 2000 and was attempting to regain the position.

2. The Complainants are supporters of the incumbent Commissioner, Merl Norman.

3. Wabasha County has approximately 20,000 residents and is divided into five County Commissioner Districts. The Third District has three cities, Elgin, Millville and Hammond. The Third District has approximately 4,200 residents.

4. During the week of October 11, Mr. Norman ran an ad in the local newspaper that began with the wording "What about your Wabasha County Road?" The ad mentioned several roads and included the following:

Mazeppa Township Road T180 ... lack of township and Wabasha County funds kept this road from being traded as per Merl's efforts to do so.^[1]

5. Based on his campaigning in Mazeppa Township in early October, Mr. Springer believed that the residents there were in favor of a County takeover of T-180 in order to improve the road.

6. Mr. Springer reviewed the minutes of the Wabasha County Board of Commissioners for its October 7, 2003 meeting, at which Commissioner Norman was present, and noted the following entry:

BE IT RESOLVED. That the Wabasha County Board of Commissioners hereby accept the request of Mazeppa Township to have Wabasha County adopt and maintain the 0.6 miles of Mazeppa Township Road T-180 from CSAH 1 to CR 71 and to vacate to Mazeppa Township the southern-most 0.6 miles of CR 71 from CSAH 22 north to existing Mazeppa Township Road T-180.

No Motion Made: No transfer of road^[2]

7. Mr. Springer then proceeded to create a campaign flyer the top half of which was the resolution quoted in the preceding Finding and the bottom half of which was the newspaper ad for Merl Norman. He then wrote "Fact" with an upward arrow pointing towards the portion of the county board minutes and wrote "Deception" with a downward arrow pointing towards Mr. Norman's ad on the flyer.^[3] He also highlighted the resolution language and the reference to Mazeppa Township Road T-180 with a marker.

8. The one page flyer did not include Mr. Springer's name or his address, or the name and address of a campaign committee.

9. Mr. Springer also prepared an eight-page handout which consisted of the full minutes of the October 7, 2003 meeting of the Board of County Commissioners. Mr. Springer highlighted a portion of the minutes in which the Board unanimously approved changing existing County State Aid Highway 22 to a county road. Mr. Springer then wrote next to the minutes "could have been used in the 3rd district instead of giving it to the 2nd district."^[4]

10. Mr. Springer had copies of the flyer and the County Board minutes in his kitchen along with copies of a one-page disclaimer sheet containing his name and address.^[5] Mr. Springer also prepared 40 envelopes for a mailing to city and township officials.

11. On October 15, 2004, while Don Springer was at work, his brother, Ronald Springer, called and asked if there was anything he could do to help on the campaign. Donald Springer told his brother that there was a mailing ready to be put in envelopes in his kitchen. Ronald Springer then proceeded to his brother's house and put the one page flyer and the packet of minutes into the envelopes addressed to the township and city officials. They were then mailed, without the disclaimer sheet.

12. When Donald Springer was campaigning house to house on October 29, 2004, he knocked on the door of Complainant Lisa Mohler, who is also the clerk for Mazeppa Township. Mr. Springer offered her a packet containing the flyer and County Board minutes. She told him that she had earlier received this packet in the mail (on October 20, 2004) without any indication of who had sent it. Mr. Springer told her that the packet had been mailed by him and that the disclaimer must not have been included.

13. During the October 7, 2004 County Board meeting, county employees recommended that the state aid designation be changed from Highway 22 to Highway 33 in order to gain the county more gas tax dollars. Highway 22 is located in District 3 and Highway 33 in District 2. The recommendation was adopted. Highway 22 then became County Road 85.^[6]

14. Although Commissioner Norman had made the motion on behalf of Mazeppa Township to make Township Road T-180 a county road, he withdrew the motion at the October 7, 2003 meeting because he believed there was no money available to upgrade the township road to a county road, so that it could be traded. County employees recommended against making T-180 a county road because it was not up to county standards.

15. At the October 7th, County Board meeting Commissioner Norman stated that he wanted the minutes to reflect that there was a lack of funding to upgrade Township Road T-180.^[7] This statement was not recorded in the minutes, however. Commissioner Norman made no motion to amend the minutes at a later meeting.

16. Subsequent to the distribution of Mr. Springer's campaign material described above, Commissioner Norman prepared a handout which responded to Mr. Springer's allegations. The handout informed Mazeppa Township residents that Mr. Norman's newspaper ad was in fact accurate and noted that "maintenance on the above-mentioned County Road No. 85 will be the same as when it was No. 22, as verified by the County Road Maintenance Supervisor."^[8] This campaign material was then distributed in Mazeppa Township.

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS

1. The Administrative Law Judge panel has jurisdiction in this matter under Minn. Stat. § 211B.35.

2. That the Respondent received proper notice of the hearing in this matter.

3. Minn. Stat. § 211B.04(a) and (b) requires that a person who participates in the preparation or dissemination of campaign materials must prominently include the name and address of the person or committee causing the material to be prepared or disseminated, in a disclaimer.

4. That violations of Minn. Stat. § 211B.04 must be proved by the Complainants by a preponderance of the evidence.

5. That the flyer (Exhibit C) and the packet of Board minutes (Exhibit E-1) prepared and mailed by Donald Springer did not include his name or address and therefore violated Minn. Stat. § 211B.04(a) and (b).

6. Minn. Stat. § 211B.06, subd. 1 provides that a person who intentionally participates in the preparation or dissemination of campaign material with respect to the personal or political character or acts of a candidate that is designed or tends to defeat a candidate for election to a public office, that is false, and the person knows is false or communicates to others with reckless disregard of whether it is false, violates the law.

7. The burden of proving a violation of Minn. Stat. § 211B.06, subd. 1 is on the Complainants to prove a violation by clear and convincing evidence.^[9]

8. That the Complainants have not proved by clear and convincing evidence that Mr. Springer's labeling of Commissioner Norman's ad as "Deception" was false, or that Mr. Springer knew it to be false or communicated it to others with reckless disregard of whether it was false.

9. Under Minn. Stat. § 211B.35, subd. 2 the panel is authorized to impose a civil penalty of up to \$5,000 for a violation of Chapter 211B.

Based upon the record in this matter, and for the reasons set out in the following Memorandum, the panel of Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED: That Respondent Donald Springer is assessed a civil penalty of \$100, payable within 30 days of the date of this Order and payable to "Treasurer, State of Minnesota."

Dated this 11th day of January 2005.

S/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

S/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

S/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER

Administrative Law Judge

Reported: Taped
No Transcript Prepared.

MEMORANDUM

The Complainants argue that Donald Springer prepared and distributed campaign material concerning the acts of Mr. Norman that is false and that Mr. Springer either knew was false or communicated to others with a reckless disregard of whether or not it was false. The Complainants have the burden to show a violation by clear and convincing evidence. The alleged false statement is Mr. Springer's labeling of a statement by Mr. Norman in a newspaper ad as "deceptive." The statement described the County Board action on Township Road T-180 as not being accomplished due to a lack of funds which Mr. Norman stated "kept this road from being traded as per Merl's efforts to do so."

When Mr. Springer compared the newspaper ad and the minutes of the County Board meeting he concluded that Mr. Norman had not in fact made an effort to trade Mazeppa Township Road T-180 as he claimed in his ad. The County Board minutes,

which are the official record of action by the County Board, clearly indicated that no motion was made. And based upon the audiotape of the County Board meeting it appears that Commissioner Norman withdrew his motion. He did state that he wanted the minutes to reflect that a lack of funding prevented upgrading T-180. That statement was not included in the official minutes, however, that were reviewed by Mr. Springer.

Mr. Springer also argues that Mr. Norman's statement was deceptive in that substandard roads such as Township Road T-180 can be traded even though they are not up to county standards as long as three commissioners agree to do so.

The Complainants were clearly offended by the claim by Mr. Springer that Commissioner Norman was deceptive. However, it was not clearly a false statement by Mr. Springer to state that Commissioner Norman's newspaper ad was deceptive when compared to the County Board Minutes. The Supreme Court interpreted similar language concerning false statements in a predecessor statute and observed that the statute was directed against the evil of making false statements of fact and not against criticism of a candidate or unfavorable deductions derived from the candidate's conduct.^[10] The Court also stated that:

Although the inferences made by appellant may be considered extreme and illogical, they do not come within the statute. The public is protected from such extreme inferences by the campaign process itself. For example, in this case, respondent distributed two flyers rebutting appellant's remarks.^[11]

Similarly, in this case, Mr. Norman had time to issue a response to rebut Mr. Springer's claim. And even if Mr. Springer's label was not completely accurate, the record does not support a conclusion that he knew his statement was false or made with reckless disregard of its falsity. Rather, it appears that Mr. Springer believed the ad was deceptive and had some grounds for his belief. The Complainants have not met their burden to demonstrate by clear and convincing evidence that a false statement was made.

The Complainants also point out that the materials prepared and distributed by Mr. Springer contained no disclaimer, that is no name and address. A disclaimer is required on all campaign materials under Minnesota election law. At the hearing Mr. Springer candidly admitted that he had failed to include the disclaimer sheet in his mailing to the 40 city and township officials. The record indicates that this occurred because his brother helped with a mailing when Mr. Springer was not home and apparently was not aware that a disclaimer sheet needed to be included.

It is therefore concluded that the violation was inadvertent. Mr. Springer also accepted responsibility for the violation at the hearing. Additionally, the mailing was limited to 40 city and township officials rather than being a district-wide mailing. Mr. Springer did prevail in the election with approximately 52% of the vote. However, it is difficult to conclude that the lack of a disclaimer in a small mailing had a significant

impact on the election. Considering all the above factors, the panel concludes that an appropriate civil penalty in this case is \$100.

G.A.B., A.W.K., B.J.H.

^[1] Ex. C.

^[2] Ex. E-1.

^[3] Ex. C.

^[4] Ex. E-1.

^[5] Ex. 4.

^[6] Ex. 11.

^[7] Ex. D.

^[8] Ex. 3.

^[9] Minn. Stat. § 211B.32, subd. 4.

^[10] Kennedy v. Voss, 304 N.W. 2d 299, 300 (Minn. 1981).

^[11] Id.